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Maine State Panel of Mediators Annual Report, Fiscal Year 2009

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ANNUAL REPORT
PANEL OF MEDIATORS

Fiscal Year 2009

The following report is submitted pursuant to 26 M.R.S.A. § 965(2)(E) (2007).

The primary function of the Panel of Mediators is to assist bargaining agents, who represent public employees at all levels of government and education in Maine, and public employers to successfully negotiate initial or successor collective bargaining agreements. This process is called interest mediation and it entails a State mediator persuading the parties to alter their positions sufficiently to permit agreement. The Panel also has authority to engage in interest mediation pursuant to the Agricultural Marketing and Bargaining Law, 13 M.R.S.A. § 1953, et seq. (2005 and Supp. 2008), and to participate in helping resolve private sector collective bargaining disputes.

The number of new interest mediation requests received this fiscal year was essentially unchanged from the total for the preceding year; there were 39 new requests compared with 40 in FY 2008 and 47 in FY 2007. During the last fifteen years, the number of new interest mediation filings per year ranged from the low of 39 this year to a high of 74 filings in FY 1997. The numerical average number of mediation requests received per year over the last 15 years (including this year) is 60.9 new filings per year. In addition to the new mediation requests received during the fiscal year just ended, there were 16 matters carried over from FY 2008 that required some form of mediation activity during the year. Last year, 21 matters were carried over from FY 2007. Thus, the total number of mediation matters requiring the Panel's attention in this fiscal year totaled 55, down from 61 during the previous fiscal year. In the uncertain economy of the early 2000's, most parties negotiated only one-year agreements, hoping that the situation would stabilize or improve sufficiently the next year to permit more productive negotiations at that time. Beginning late in calendar year 2006, parties began returning to the practice of negotiating multi-year agreements; therefore, one might have anticipated increased demand for mediation this year.

The flat level of mediation activity this year was undoubtedly the result of the economic downturn. Faced with increasing costs, particularly soaring energy costs in the first half of the year, increases in the cost of health care, and declining revenues, many public employers sought to re-open current agreements or to negotiate no-change

successor agreements, in efforts to avoid employee layoffs. In response, many bargaining agents agreed to re-openers or to contracts that continued current wages and benefits for their duration. Because the economic factors were so readily apparent to all, such instances did not involve any third-party intervention and reduced the number of situations in which mediation would normally be expected.

Mediation is recorded as a single request, even when it involves multiple bargaining units of a single employer. For example, one filing this year was for 4 units; 3 units were involved in another. In such situations, the mediator undoubtedly expends substantial periods of time on issues particular to individual bargaining units, making the mediation process longer and more complicated. In total, 62 bargaining units were involved in mediation this year.

The following table reflects the Panel's rate of success over the past several years:

Fiscal Year	Settlement Rate
1995	50%
1996	66.2%
1997	82.1%
1998	82.3%
1999	73.91%
2000	80.7%
2001	85.94%
2002	76%
2003	83.1%
2004	86.8%
2005	88.5%
2006	77.8%
2007	84.9%
2008	87.5%
2009	72.1%

Fiscal issues, particularly general wage adjustments and health insurance financing, were the most significant issues to resolve in Maine public sector negotiations

this year. Anecdotal evidence from Panel members indicates that the downturn in the economy has been the single most important factor affecting bargaining this year. Given the magnitude of the economic downturn and its substantial impact on public revenues, it is not at all surprising that the settlement rate declined significantly this year.

The Panel received a request for services this year pursuant to the Agricultural Marketing and Bargaining Law for a dispute between the Agricultural Bargaining Council and McCain Foods U.S.A., involving approximately one-half of the Maine potato crop. State Mediator David Bustin met with the parties for the 3 consecutive days of mandatory mediation. The mediation resulted in an agreement, resolving the dispute.

Several years ago, members of the Panel of Mediators received instruction by the U.S. Department of Labor in interest-based bargaining techniques. Starting in FY 1996, State mediators have offered non-confrontational bargaining services to the public sector labor-management community upon the joint request of the parties. In the 62 instances where this problem-solving "preventive mediation" approach has been used, 60 settlements resulted (96.8% settlement rate). This year, we received a single request for preventive mediation services and one such case was on-going as of the close of the last fiscal year. Both cases were settled in "preventive mediation" this year.

Since both new filings and cases carried over from prior years contributed to the actual workload of the Panel in the course of the 12-month period, we have reported settlement figures that represent all matters in which mediation activity has been completed during the reporting period. In calculating the settlement rate, only those matters where the mediator was actively involved in the settlement are considered as having been successful. Although parties who reach agreement after concluding formal mediation often credit the mediator's efforts as having been instrumental in resolving the dispute, the degree to which mediation contributed to the settlement is too speculative for such cases to constitute settlements for reporting purposes. Likewise, cases in which a request for mediation was filed but in which the parties settled their differences prior to participating in mediation are not included in the settlement rate.

The distribution of the Panel's caseload, according to the statute pursuant to which referrals were made over the last several years, is as follows:

Fiscal Year	New Cases Referred	Cases Referred Under State, University and Judicial Acts	Cases Referred Under Municipal Act, inc. County and Turnpike Authority Referrals	Private Sector Referrals	Agricultural Marketing Act
1995	77	9	67	0	1
1996	69	5	64	0	0
1997	74	12	60	2	0
1998	68	2	66	0	0
1999	69	3	66	0	0
2000	73	6	67	0	0
2001	61	6	55	0	0
2002	54	3	50	0	1
2003	64	8	55	0	1
2004	65	2	63	0	0
2005	55	1	54	0	0
2006	58	4	34	0	1
2007	47	4	43	0	0
2008	40	2	38	0	0
2009	39	2	37	0	0

The requests for services received in the last two years involved the following employee organizations:

	<u>2009</u>	<u>2008</u>
Maine Education Association/NEA ¹	13	16
Teamsters Union Local 340	9	11
AFSCME Council 93	6	4
Maine State Employees Association	5	2
Maine Association of Police	3	3
International Association of Fire Fighters	2	1
International Association of Machinists	1	0

The overall level of demand for mediation decreased by 2.5% this year, while requests in connection with all sectors except K-12 school unit bargaining remained unchanged. These numbers are likely the result of a situation noted in the last three reports. Anecdotal evidence from practitioners indicated that in FY 2005 many municipal sector negotiations were concluded by one-year agreement extensions with a wage adjustment, rather than comprehensive successor agreements. Municipal employers and

¹While reference is made to the Maine Education Association, the Maine Association of Police or International Association of Fire Fighters for the sake of simplicity, the various activities described were undertaken by local associations which are affiliated with each of the larger state-wide or national employee organizations.

bargaining agents were apprehensive regarding the impact of spending caps on personnel and operations and that either slowed the bargaining process, so fewer cases became ripe for mediation or resulted in the parties agreeing to one-year contract extensions with wage adjustments only. Starting in 2006, parties in the municipal sector returned to negotiating longer-term agreements, many of which expired this year.

The demand for mediation services in the K-12 sector decreased by 6.25%. Much of the decline can be attributed to the economic slowdown, the drop in GPA that was anticipated in late 2008 and into 2009, and the uncertainty concerning the availability of federal economic stimulus dollars for education. This loss of funding in the short term is not as large as it would have been without federal aid.

The citizens initiative seeking repeal of the K-12 reorganization law and other related bills considered by the Legislature during 2009 added a considerable amount of uncertainty through much of the year. No major modifications were made, but a state-wide referendum seeking repeal of the school reorganization law has been scheduled for November, 2009. Seventeen bills modifying or repealing the school reorganization law were introduced this year. In addition, the nature and scope of the new employer was unknown (or at least uncertain) throughout much of the year because of the pendency of the votes to determine whether sufficient school administrative units would join a regional school unit to fulfill the approved reorganization plan. Anecdotal evidence from Panel members also confirms that bargaining in K-12 education this year continued to be affected by on-going uncertainty regarding the future of the initiative to reorganize delivery of K-12 educational services.

Another factor that contributed to the decline in K-12 mediation activity this year was an advisory opinion issued by the Maine Labor Relations Board in early November. In circumstances where the Regional School Unit (RSU) had been approved by the voters and the RSU school committee had been elected and functioning as an initial RSU board prior to the operational date of the RSU, the MLRB expressed the view that, since the successor agreement would not be in effect until after the School Administrative Unit (SAU) had ceased to exist, absent explicit statutory language only the RSU board had the authority to negotiate a successor agreement to supplant agreements that would expire after the operational date of the RSU. While encouraging the RSU to negotiate the successor agreement, the MLRB could find no statutory basis for requiring them to do so prior to the RSU's operational date. The impact of this situation has been lessened by a

statutory change enacted this year, which requires the initial RSU board to negotiate successor agreements prior to the operational date of the RSU.

The average number of mediation-days per case decreased substantially from 3.65 in FY 2008 to 2.74 for the combined total of 39 matters, including carryovers, for which mediation was concluded. The maximum mediation days devoted to a single case this fiscal year was 11. Of the 39 cases in which mediation was concluded this year, 61.5% were resolved in 3 days or less (6 cases were resolved in one day, 11 were resolved in two days and 7 were resolved in three days). The mediation-days per case for all mediations completed this year was 2.74 days. The two preventive mediations concluded this year required a total of 7 days or 3.5 days per case. Although usually requiring more time to complete, the great majority of parties in preventive mediation over the years have reported greater satisfaction with the process and the belief that participation in the process has resulted in a better relationship with the other party.

The figures for the past fifteen-year period are summarized below:

Fiscal Year	Mediation-Days Expenditure Per Case*
1995	3.33
1996	3.20 (3.20)
1997	3.76 (3.25)
1998	2.84 (2.27)
1999	3.46 (3.47)
2000	4.19 (4.02)
2001	3.89 (3.60)
2002	3.86 (3.60)
2003	3.46 (3.14)
2004	4.16 (4.22)
2005	3.89 (3.86)
2006	3.01 (2.80)
2007	5.42 (5.45)
2008	3.65 (3.65)
2009	2.74 (2.70)

*In order to assist in comparing the number of mediation-days per case over a multi-year period, we have included the number of mediation-days per case in traditional mediations within parentheses in the above table for the years during which preventive mediation services were provided.

Of the mediations, including carryovers, that were concluded in FY 2009, 7.7% proceeded to fact finding. The percentage of cases proceeding to requests for fact finding after mediation in each of the past several years is indicated in the following chart:

Fiscal Year	Percentage of Cases Proceeding to Fact Finding*
1995	25.8%
1996	30.99%
1997	15.94%
1998	14.71%
1999	30.43%
2000	14.04%
2001	9.375%
2002	20%
2003	13.8% (38.5%)
2004	8.8% (19.11%)
2005	5.8 (25%)
2006	13.9% (20.8%)
2007	12% (26%)
2008	7.5% (17.5%)
2009	7.7% (16.3%)

*Prior to FY 2003, all post-mediation fact-finding requests were included, whether later dismissed, withdrawn or settled prior to hearing. This was somewhat inaccurate because the mediator continues to work with the parties after the fact-finding request has been filed and, in many instances, settlement is achieved in mediation before the fact-finding proceeding is ever held. We have included the former calculation in parentheses in the chart for comparison purposes with prior years.

Assuming the average of 2.74 mediation-days per case, the 16 matters still pending will consume an additional 44 mediation-days, for a total expenditure of approximately 151 mediation-days devoted to matters docketed in or carried over to FY 2009.

In addition to mediation in the contract negotiation process, Title 26 M.R.S.A. § 893 provides that the services of the Panel are available upon request of "either party to a controversy," if the Executive Director of the Maine Labor Relations Board determines that the dispute could be resolved through mediation and that "it is in the public interest to mediate." In a prohibited practice case brought by AFSCME Council 93 against the Sagadahoc County Sheriff's Department, the parties requested that a state mediator be assigned to assist in resolving the underlying problem. The parties resolved their dispute in mediation, resulting in withdrawal of the prohibited practice complaint.

Members of the Panel of Mediators during the past fiscal year were:

John Alfano	Biddeford
David Bustin	Hallowell
James Carignan ²	Harpswell
Maria Fox ³	Portland
Jack Hunt	Kennebunk
Robert L. Lyman ³	Freeport
James Mackie	South Portland
Sheila Mayberry	Cape Elizabeth
Charles A. Morrison	Auburn
John M. Norris ⁴	Carrabassett Valley
Don Ziegenbein ³	Bangor

Mediation continues to be the cornerstone of public sector collective bargaining in Maine. Practitioners in the labor relations community have come to accept and value the process and the expertise and competence of members of the Panel. The members of the Panel have gained practical experience and insights that are invaluable in the effective use of this tool. The Panel's reputation and expertise, coupled with a growing awareness of

²Jim Carignan, Dean Emeritus of Bates College, resigned from the Panel on November 7, 2008. Jim was the senior State mediator, having served continuously since 1978. Whenever a particularly difficult or sensitive dispute arose, Jim was always ready to step in, with his unique blend of intelligence, experience and good humor, to help the parties to resolve their differences.

³On December 10, 2008, Governor Baldacci appointed Ms. Fox and Mr. Lyman and reappointed Mr. Ziegenbein to three-year terms.

⁴On December 3, 2008, Governor Baldacci reappointed Mr. Norris to a new three-year term.

alternative dispute resolution in our society, are likely to result in continued demand for the Panel's services in the future.

Dated at Augusta, Maine, this 30th day of June 2009.

Respectfully submitted,

Marc P. Ayotte
Executive Director
Panel of Mediators and
Maine Labor Relations Board